

## Funding Water Infrastructure

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**C**urrent economic conditions have created a dramatic funding shortfall for water infrastructure projects. The chaos in the credit markets that has prevailed over the last several months has made it difficult for public utility owners to access capital markets for funding critical infrastructure projects. Even with money made available by the American Recovery and Reinvestment Act (ARRA), there is a tremendous need for infrastructure funding.

The United States Environmental Protection Agency (EPA) has estimated the funding shortfall over the next 20 years to be more than \$450 million. Given this funding shortfall, utility owners are looking for alternative funding sources and mechanisms to make certain the country's water infrastructure continues to provide safe and reliable service. The following is a review of some recent regulatory and legislative activity that looks to address this increasing need:

### State Revolving Fund Programs

President Obama's proposed 2010 budget includes \$1.5 billion and \$2.4 billion for the Drinking Water State Revolving Fund (DWSRF) and Clean Water State Revolving Fund (CWSRF) programs, respectively. This represents substantial increases over the appropriations for fiscal year 2009. This appropriation is in addition to the \$6 billion allocated to DWSRF and CWSRF projects as part of ARRA.

From their allocated portion of these funds, each state must use 20 percent to fund "Green Reserve" projects. Eligible project types include those with water and/or energy efficiency components; stormwater infrastructure projects; and environmentally-innovative projects. Planning, design and construction activities are eligible for Green Reserve funding. Examples of projects that have been funded, in whole or in part, with Green Reserve funds include:

- Cheyenne, Wyoming – \$40 million renovation and upgrade of water reclamation facilities to remove ammonia
- Charlotte-Mecklenburg, North Carolina – \$750,000 to purchase and install low flow toilets
- Bucksport, Maine – Construction of a CSO treatment facility that incorporates low-energy swirl concentrator technology
- Beebe, Arkansas – Replace pump stations with gravity

lines to reduce electricity requirements

- Dehli Charter Township, Michigan – Increase treatment plant capacity for processing biosolids producing methane gas used to fuel two microturbines and generate up to 60 kW of energy
- Atlantic County, New Jersey – Installation of solar panels at a wastewater treatment facility that generates 660,000 kWh of electricity annually

### Water Infrastructure Financing Act

Earlier this year, the U.S. House of Representatives recommended the Water Infrastructure Financing Act (S1005) be considered by the Senate. This legislation provides for \$15 billion and \$20 billion for the DWSRF and CWSRF programs, respectively. This bill also would provide funding for rehabilitation and replacement of aging utility infrastructure, as well as enhanced security. As currently proposed, the bill would give preference to utilities that can demonstrate a commitment to rigorous asset management and financial planning. This bill also calls for the formula allocating CWSRF to be adjusted and based on the 2004 Clean Water Needs survey, as opposed to the current practice of basing allocations on the 1970 census.

### Water and Wastewater Trust Fund

The House Subcommittee on Water Resources and the Environment proposed H.R. 3202 – Water Protection and Reinvestment Act of 2009. This legislation would create a trust fund supported by new federal taxes that would provide \$10 billion annually for water infrastructure projects. As proposed, the bill calls for the funds to be administered through state revolving fund programs. While there is some support for this legislation, those opposed cite the need for water infrastructure to continue to be funded at the local level through utility rates and charges rather than through non-water related federal taxes. The concern is that communities that have not managed systems appropriately by implementing adequate rates would be subsidized by those communities that had. Further, it is feared that many communities would be inclined to continue to allow their rates and charges to lag in anticipation of federal money.

### National Infrastructure Bank

AWWA is calling for the establishment of a federal infrastructure bank that would provide low interest loans

or, in the case of larger projects, loan guarantees. The proposed infrastructure bank also would have the ability to purchase or guarantee bonds used to finance state revolving fund programs. Proposed legislation creating a federal infrastructure bank to provide for water, transportation and electric transmission projects has recently gained some support. In addition, President Obama proposed that the fiscal year 2010 budget include funds for a national infrastructure bank.

### Private Activity Bonds

Private Activity Bonds (PABs) are debt issued for the benefit of, or due to the substantial participation of, a non-governmental entity. Certain types of PABs qualify for

tax-exemption, including those being issued to fund certain water and sewer facilities. The issuance of PABs is restricted by a federally-mandated volume cap. In an effort to release much needed capital for infrastructure projects, there have been legislative discussions regarding the revision of the volume cap to exclude water and sewer projects. A recent AWWA report indicates that the removal of water and sewer projects from the established volume cap would be expected to increase the amount of capital available for infrastructure projects structured as public private partnerships (P3). Additionally, the ARRA provided for the temporary modifications to current tax laws which would allow PABs to share the same tax advantages as government issued tax-exempt bonds. ❖

## Bottled Water Regulations Amended to Protect Against Fecal Contamination

By Julie Hellmann

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The Food and Drug Administration (FDA) is amending the bottled water regulations to ensure that the minimum quality of bottled water, as affected by fecal contamination, is no less protective of public health than those set by the United States Environmental Protection Agency (EPA) for public drinking water.

The FDA issued the rule in response to the EPA's issuance of a new National Primary Drinking Water Regulation (NPDWR), the Ground Water Rule (GWR). The Federal Food, Drug and Cosmetic Act requires the FDA to promulgate a standard of quality regulation for the new NPDWR contaminant, fecal microbial pathogens, otherwise the GWR will be applied to bottled water.

The FDA agrees with EPA's conclusions that groundwater sources may be vulnerable to fecal contamination. Since the International Bottled Water Association estimates that groundwater is the source water for approximately 75 percent of U.S. bottled water products, this amendment is necessary to further protect bottled water from fecal contamination.

The proposed rule was published in the Federal Register on September 17, 2008. The FDA received 19 responses which generally supported the proposed rule. The agency's response to the comments, and the amended final rule, was published in the Federal Register on May 29, 2009. The final rule, effective December 1, 2009, amends 21 CFR

Parts 129 and 165 to provide the following additional requirements for bottled water manufacturers:

- Test source water and finished bottled water at least weekly for total coliform, and if positive, conduct follow-up testing to determine whether *E. coli* is present. Source water testing applies to both groundwater and surface water sources, excluding source water from already treated public water systems.
- Source water containing *E. coli* will be prohibited from use in the production of bottled water. Bottled water containing *E. coli* will be deemed adulterated and cannot be used.
- Previously *E. coli*-contaminated sources will be considered negative for *E. coli* after both corrective measures have been taken to rectify or eliminate the contamination to prevent reoccurrence and five samples have been collected over a 24-hour period, from the same sampling site originally testing positive, are tested and found to be *E. coli* negative. Records of corrective measures must be maintained.

The amended rule applies to both domestic and foreign bottled water establishments that produce and export their bottled water products for consumption in the United States. ❖



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